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FISCAL IMPACT REPORT

SPONSOR Senate Rules Committee **ORIGINAL DATE** 2/9/08
LAST UPDATED _____ **HB** _____
SHORT TITLE State Ethics Commission Act **SB** 437/SRCS
ANALYST Wilson/Escudero/Baca

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SB 437 relates to the following ethics bills:

- HB 160, Amend Gift Act Allowable Amounts
- HB 309, State Ethics Commission Act
- HB 344, State Ethics Commission Act
- HJM 24, Study Bipartisan State Elections Commission
- SB 132, Whistleblower Protection Act
- SB 320, Ethical Conduct of Political Subdivisions
- SB 376, State Ethics Commission Act
- SJR 6, Create State Ethics Commission, CA

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Senate Rules Committee Substitute for Senate Bill 437 creates a right to an action for civil damages against a public employer that takes any retaliatory action against a public employee because the public employee either:

- discloses or threatens to disclose an activity, policy or practice of the public employer that constitutes an unlawful or improper act or that the public employee believes in good faith constitutes an unlawful or improper act;
- provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act or that the public employee believes in good faith constitutes an unlawful or improper act.

The bill provides legal remedies for “whistle blowing” violations.

The provisions of this act apply only to civil actions for damages resulting from retaliatory action that occurred on or after July 1, 2005. Provisions of the act are effective July 1, 2008.

FISCAL IMPLICATIONS

This bill has no appropriation. Costs are unknown and will be determined by awards made related to the types and frequency of litigation involved.

SIGNIFICANT ISSUES

The provides that:

A public employer that violates the provisions of this section shall be liable to the public employee for all relief necessary to make the employee whole, including actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

It shall be an affirmative defense to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, poor job performance or a reduction in workforce for purposes unrelated to conduct prohibited pursuant to this section.

The remedies provided for in this section are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

OTHER SUBSTANTIVE ISSUES

Initially, the ethics reform act was considered at the request of the Governor and a commission appointed to make recommendations regarding ethics reform. The provisions contained in related bills included the commission's recommendations and addressed and its provisions addressed the conduct of public employees, contractors and lobbyists. Whistle blower protections are the only provisions remaining from SB 437 and other ethics reform related bills.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Whistle blower protections will not be as clearly stated as under existing statutes.

DW:PE:LRB/bb